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LA9-8 (cont'd) fundamentally inadequate for failing to provide this essential starting point. The document must be expanded to include a detailed description of existing environmental conditions on the Project site, as well as conditions on land located adjacent to or near the site. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722-729.) Notably, changes of this magnitude would also trigger recirculation of the amended document for further public review and comment. (See CEQA Guidelines, § 15088.5.)

Section 3: Alternatives

LA9-9	<u>Page</u> 3-1	<u>Comment</u> <p>An EIR's alternatives analysis should include a range of reasonable alternatives to the project that would feasibly attain most of the basic project objectives but would avoid or substantially lessen any of the significant effects of the project. (CEQA Guidelines, § 1526.6, subd. (a).) This means the EIR should consider the project, plus a "range" of alternatives, one of which must be the "no project" alternative. (CEQA Guidelines, § 15126.6, subd. (c).)</p> <p>The Draft EIS/EIR's discussion of alternatives does not adequately explain how the Project's impacts can be lessened by adopting an alternative to the Project, nor does it compare each proposed alternative to the goals and objectives of the Project. Upon revision and recirculation of the Draft EIS/EIR, this discussion will need to be revised to provide meaningful analysis of the relative impacts of each alternative.</p> <p>Potential alternatives may be eliminated from detailed consideration in the EIR, based on (i) failure to meet most of the basic project objectives, (ii) infeasibility, and (iii) inability to avoid significant environmental impacts. (CEQA Guidelines, § 15126.6, subd. (c).) The Draft EIS/EIR should be revised to include a more thorough discussion of which, if any, alternatives were considered and rejected for further analysis.</p>
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Section 4.7: Special Status Species

LA9-10	<u>Page</u> <i>Passim</i>	<u>Comment</u> <p>The Draft EIS/EIR states that impact on wildlife species and their habitats from construction and operation of the Project would vary</p>
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LA9-9 The alternatives analysis in the EIS/EIR was prepared in accordance with NEPA, CEQ guidelines, the CEQA, and other applicable requirements. The EIS/EIR is comprehensive and thorough in its identification and evaluation of the environmental impacts of the proposed Project and includes a reasonable range of alternatives. As discussed in the introduction to Section 4, the No Project Alternative has been analyzed in comparison with the proposed Project for each of the major resource topics. See also the response to comment PM1-5.

LA9-10 As discussed in the introduction to Section 4, the section describes the affected environment as it currently exists (baseline conditions) for each of the major resource topics. Section 4.7 includes discussions of habitat requirements, occurrence of suitable habitat and individuals along the Project route, and potential Project impacts on habitat or species for those species with the potential to be affected by the Project. As shown in Table 4.7.2-1, several species are not likely to be encountered by the Project due to the construction schedule, species' range, or lack of habitat along the Project route. These species do not warrant additional discussion or species-specific surveys because they would not be affected by the Project.

For those species with the potential to occur along the Project route or with suitable habitat along the Project route, surveys were conducted or required as necessary to determine potential Project impacts. In some instances, surveys are unnecessary because impacts on habitat are the primary concern for a given species and those impacts can be quantified without species-specific survey data.

Section 4.7.8 has been revised to include a statement that the proposed Project would not restrict the range of endangered, rare, or threatened species.

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(cont'd)

depending on the requirements of each species and the existing habitat present along the pipeline. Furthermore, construction and operation of the pipeline would directly impact wildlife through disturbance, displacement, habitat fragmentation, habitat degradation, and mortality.

CEQA Guidelines section 15125 requires that an EIR include a description of the physical environmental conditions, as they exist at the time the notice of preparation is published. This environmental setting constitutes the baseline physical conditions by which a lead agency determines whether an impact is significant. The Draft EIS/EIR failed to adequately establish baseline environmental conditions.

CEQA Guidelines section 15380 states that a species not included on federal or state endangered or threatened lists shall be considered to be endangered if the species can be shown to be in jeopardy from loss of habitat, changes in habitat, over exploitation, predation, disease, or other factors; or rate if the species may become endangered if its environment worsens due to small population size throughout the range or a significant portion of its range.

Impacts to species on Table 4.7.2-1 may be locally or regionally significant depending on the level of use. Species-specific surveys for all species listed on Table 4.7.2-1 must be conducted to adequately assess and evaluate Project impacts on these species.

The Draft EIS/EIR should clarify whether the Project would restrict the range of any endangered, rare or threatened species, which is a mandatory finding of significance under CEQA. (CEQA Guidelines, § 15065, subd. (a).)

Section 4.12: Air Quality

LA9-11

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4-225

Comment

The Draft EIS/EIR acknowledges the Project's potentially significant cumulative air quality impacts. The EIS/EIR states "it could be speculated that in the future the Project could transport gas for new or expanded power plants; therefore the Project could result in a cumulative impact on the region's air quality."

Mexicali, Mexico, and Imperial County, California, share an air basin that exceeds health-based air quality standards adopted by both the

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LA9-11 It would be appropriate for agencies with permitting authority in the future to determine whether health risk assessments are required for proposed new facilities and, if so, to obtain them. Such action is outside the purview of the FERC and the CLSC in this proceeding. See also the response to comment FA6-3.

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United States and Mexico. Peak levels of ozone and carbon monoxide on the Imperial County side of the border are more than double the health-based standards and inhalable particles can exceed three times the standard. Regulatory authorities in the Southwest United States require that readily available, cost-effective air pollution control technologies be used on power plants sited in this region. Mexico does not have this requirement; therefore some of the plants the Project will be serving have significantly higher air pollution emissions than would be allowed in the United States. Therefore, the emissions from power plant facilities served by the Project must be further addressed in the EIS/EIR.

NEPA and CEQA direct the lead agencies to carry out their programs in an environmentally protective manner. That includes promoting efforts that will minimize damage to the environment. It is clear that the Project will indirectly result in significant adverse impacts to the air quality of the region. Accordingly, the County believes that the emissions from Mexican power plants should be identified and that the adverse impacts of these facilities be quantified and presented in the EIS/EIR for public review. As permitting agencies, FERC, CLSC, the Bureau of Land Management and the Bureau of Reclamation should ensure that all generating facilities associated with the Project, as a condition of connection to the expanded pipeline, use cost-effective and best available air pollution control technologies.

In order to fully disclose all environmental impacts caused by the Project, the EIS/EIR must be revised to comprehensively analyze both direct and indirect environmental impacts. Under CEQA, "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." (Pub. Resources Code, § 21002.)

LA9-12

Further, the EIS/EIR should include a provision stating that certain types of development would be required to prepare a health risk assessment before receiving permits for use or operation of a source of emissions. This requirement alone is not a mitigation measure. The EIS/EIR must include why the health risk assessment is required, what entity would enforce the required standards, and what the required response to a negative result would be. (See *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91

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LA9-12 See the response to comment FA6-3.

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LA9-12 | Cal.App.4th 1344, 1367-1371; see also *Bakersfield Citizens for Local*
(cont'd) | *Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1194.)

Section 4.14: Reliability and Safety

	<u>Page</u>	<u>Comment</u>
LA9-13	4-221	Imperial County is one of the most active seismic areas in the nation with seismic events occurring on a daily basis. The Draft EIS/EIR appears to downplay this, only listing the risks associated with earthquakes in Table 4.14.4-2. This potentially significant impact needs to be fully disclosed, analyzed, and mitigated in the revised Draft EIS/EIR.

Section 4.15: Cumulative Impacts

	<u>Page</u>	<u>Comment</u>
LA9-14	<i>Passim</i>	Under CEQA, a lead agency should undertake a two-step analysis to determine the cumulative impacts of a project. When looking at the cumulative effects of various projects proposed for an areas with similar impacts, the first question is whether the combined impacts of the projects will constitute a significant cumulative impact. The CEQA Guidelines direct that one of two methods may be used and the method that is used should be described in the EIR. The EIR may either: (1) provide a list of past, present, and probable future projects producing related or cumulative impacts, or (2) provide a summary of projections contained in the general plan, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or area wide conditions contributing to the cumulative impact. (CEQA Guidelines, § 15130, subd. (b)(1).) For whichever method is used, the EIR should "define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used." (<i>Id.</i> at subd. (b)(5).) If the first question is answered yes, then the second step is to ask whether a particular project's "incremental" contribution to that significant cumulative impact is "cumulatively considerable" (and thus significant in and of itself). (See CEQA Guidelines, § 15064, subd. (i)(1); <i>Communities for a Better Environment v. California Resources Agency</i> (2002) 103 Cal.App.4th 98, 120.)

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LA9-13 Section 4.14.3 has been revised to acknowledge that the Project would be subject to potential seismic impacts, and a cross reference has been added to direct the reader to Section 4.1.4, where a detailed analysis of potential seismic impacts is presented.

LA9-14 As discussed in the introduction to Section 4.15, projects and activities included in the cumulative impacts analysis are generally those of comparable type and nature of impact, and are located within the same counties that would be affected by the North Baja Pipeline Expansion Project. With some exceptions, more geographically distant projects are not assessed because their impact would generally be localized and, therefore, would not contribute significantly to cumulative impacts in the proposed Project area. One of these exceptions is air quality. Therefore, an analysis of cumulative air quality impacts associated with the Gasoducto Bajanorte Pipeline Project in Mexico is included in Section 4.15.8.

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If a project's contribution is found to be cumulatively considerable, the project's incremental contribution can be rendered less than cumulatively considerable through the adoption of mitigation. (CEQA Guidelines, § 15064, subd. (i)(2).) It is not necessarily true that mitigation sufficient to render a *project-specific* effect less than significant is sufficient to render a "cumulatively considerable" incremental impact "less than cumulatively considerable."

Here, the Draft EIS/EIR fails to make clear the important distinction between cumulative impacts and indirect impacts of the Project. Cumulative impacts are those in relation to related overall projects (i.e., other power plant/pipeline networks). Indirect effects are those caused in some way by the Project.

The Draft EIS/EIR must be revised to analyze all cumulative impacts of the Project using the two-step approach outlined above. In particular, the County requests that the EIS/EIR be revised to adequately analyze and mitigate the Project's cumulative air impacts and growth-inducing impacts.

Section 5.6 FERC and CSLC Staff's Recommended Mitigation

LA9-15

Page
5-5

Comment

The Draft EIS/EIR includes many "recommended" mitigation measures. The document clearly explains that these measures are not mandatory, but merely "recommended" by staff. Thus, there is no guarantee that they will be adopted or implemented. As such, these measures do not constitute true "mitigation" under the definition of CEQA. If any of these "mitigation measures" would substantially lessen the severity of the Project's significant impacts, they should be revised to include mandatory, enforceable language, such as "shall" or "must."

For example, on page 4-130 of the Draft EIS/EIR, there are staff-recommended mitigation measures which, if implemented, purportedly would reduce the Project's impacts on special status species to a less than significant level. In order to ensure these mitigation measures are enforceable and binding on the Project applicant, the Draft EIS/EIR must be revised to make these measures mandatory.

LA9-16

Thank you for the opportunity to review and comment on the EIS/EIR. The County believes that significantly more information is necessary in this document before it can be deemed adequate under both NEPA and CEQA's minimum requirements. We look forward to further

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The recommendations of the FERC and CSLC staffs presented in the EIS/EIR are, in practice, included as conditions to any authorizations issued by their respective Commissions. These recommendations are included in Table 5.1-1, which forms the basis for the mitigation monitoring program that would be implemented during construction and operation of the North Baja Pipeline Expansion Project.

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See the responses to comments PM1-5 and LA9-4.

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LA9-16 | opportunities to review and comment on a revised, improved document. Please do not hesitate
(cont'd) | to contact us if you have any questions about our comments or the County's concerns.

Sincerely,

Sabrina V. Teller
Attorneys for Imperial County

Cc: Ralph Cordova, County Counsel for Imperial County
Joanne Yeager, Assistant County Counsel, Imperial County

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ORIGINAL

OFFICIAL RECORDS OF
YUMA COUNTY RECORDER
SUSAN MARLER



FEE #: 2006 - 45002

11/07/2006 12:36 PAGES: 0002
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REQ BY: BOB
REC BY: PATTY MAGANA

Please return original document
to the Board of Supervisors Office,
ATTENTION: CHRISTY ISBELL 373-1107
(Name & phone number)

TYPE OF DOCUMENT:

(Check the appropriate box; fill in blanks.)

RESOLUTION NO. 06-61

In support of
**TRANSCANADA'S
NORTH BAJA PIPELINE PROJECT**

CP06-61-000
CP01-23-003
JAN - 8 P 3 03
FILED
OF THE
CLERK
YUMA COUNTY COMMISSION

DOCUMENT APPROVAL:

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Approved by Yuma County Board of Supervisors:
November 6, 2006, Item No. 1.

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YUMA COUNTY BOARD OF SUPERVISORS

RESOLUTION NO. 06- 01

A resolution in support of the proposed North Baja Pipeline Expansion Project

LA10-1

WHEREAS: North Baja Pipeline LLC has proposed a modification to and an expansion of their existing pipeline to allow for the importation of Liquefied Natural Gas (LNG) sourced natural gas into Southern California; and

WHEREAS: North Baja Pipeline is currently pursuing permits for this project with the Federal Energy Regulatory Commission and the California State Lands Commission and these permits are being reviewed by these agencies in Dockets CP06-61-000 and CP01-23-003; and

WHEREAS: Southwest Arizona, including Yuma County, would indirectly benefit from this proposed Project because Southern California and the region would gain access to a new source of natural gas to replace gas from traditional domestic sources that are projected to decline in the future, by the anticipated moderating impact this new source of gas will have on natural gas prices because of the competition with traditional sources, and by improving reliability of supply to the region because gas will be delivered to the region on an entirely new pipeline transportation path; and

WHEREAS: This project provides the potential, in the future, for a direct connection to LNG sourced gas which would provide direct benefits to Yuma County;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Yuma County, Arizona, do hereby declare its support for the proposed North Baja Pipeline Expansion Project, and file this Resolution in Support with the Federal Energy Regulatory Commission and the California State Lands Commission.

Adopted this 6th day of Nov, 2006.

Casey Prochaska
CASEY PROCHASKA, Chairman of the Board

ATTEST:
The Staimont
Clerk

APPROVED AS TO FORM:
W. L. Smith
County Attorney

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The Yuma County Board of Supervisors' resolution expressing support for the proposed Project is noted.